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AUTHORITIES CITED

In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 609

HARTSVILLE OIL MILL, APPELLANT,

v.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The findings and opinion of the Court of Claims in this case were filed on May 11, 1925, and are reported in 60 Ct. Cls., (No. 17521 Congressional). They appear in the transcript of record, pages 55 to 66, inclusive.

JURISDICTION

The Court of Claims rendered a judgment dated May 11, 1925, dismissing the petition, and in favor of the United States in the sum of $674.06 for costs. (R. 66.) An appeal by the plaintiff was allowed on July 14, 1925, under Section 242 of the Judicial Code (later repealed by the Act of February 13, 1925, c. 229, 43 Stat. 936, 941).

STATEMENT OF FACTS

The appellant is one of about two hundred and eighty-five cottonseed millers or crushers who in the year 1918 were crushing cottonseed under regulations imposed by the Food Administration, and were supplying cotton linters to the United States. The short fibers that adhere to the cotton seed after the removal of the staple cotton by the first ginning process are called linters. These linters were of the munitions type, used in the manufacture of explosives, averaging 145 pounds per ton of seed cut, while commercial linters ran 75 pounds or less. (Findings VI, VII, XI, R. 56, 57.) The regulations specified prices which the mills should pay to the producers and should in turn receive for the various products of the seed, excepting linters (Findings VI, VII, XI, R. 56, 57), and thus constituted a price structure known as the " stabilization scheme " of the Food Administration (Finding XI, R. 57).

The linters were supplied through an agent of the Government known as the Du Pont American Industries, Inc. (Finding X, R. 57), under contracts (Finding IX, R. 57), the price being fixed pursuant to agreement with the cottonseed crushers, by action of a special section of the War Industries Board, at $0.0467 per pound f. o. b. point of shipment (Findings X, VIII, R. 57).

Under date of September 26, 1918, the contract between the appellant and the Government by its

agent above mentioned was reduced to writing (R. 43) and the appellant continued to deliver linters in accordance with its terms until November 28, 1918, when the following change was made (Findings X, XV, R. 57, 59):

On November 28, 1918, the need for munitions linters having passed, the Government requested the appellant to return to the commercial practice of making linters at the rate of 75 pounds or less to the ton of seed crushed, and the appellant complied with this request. (Finding XV, R. 59.) From this time on, negotiations were held between a committee representing the appellant and other crushers and the representatives of the Government, with a view to a final settlement of all the obligations of the Government and the appellant and other crushers under the contracts. (Petition, Par. XXVII, R. 14.) On December 10, 1918, the linters committee submitted a final offer of settlement to the representatives of the Government, including the Ordnance officials (Finding XVI, R. 59), which offer, it will be observed, required that the Government take every pound of linters to be produced by the appellant and the other mills during the entire season ending July 31, 1919 (the original contract with this appellant had been for a specified amount of 4500 bales), guarantee the producers against loss, and sell no munition linters owned by it at less than a certain fixed minimum price. (R. 48.)

This offer of settlement, though approved by the War Industries Board and the Food Administration, was rejected by the Ordnance Department. (Finding XVI, R. 59.) A final conference was held on December 30, 1918, between the linters committee and representatives of the Ordnance Department, the War Industries Board having gone out of existence on December 21. (Finding XVII, R. 60.)

The contract of September 26 provided that in the event of the termination of the war the Government might cancel by giving notice on or before the first day of the month when cancellation was to take effect. Any cancellation notice, to be effective on January 1, 1919, therefore, must be sent promptly. The linters committee, with its offer above mentioned, and the representatives of the Ordnance Department seemed to be far apart. Accordingly, on that day, December 30, 1918, the officials representing the Government notified the cottonseed crushers that unless they accepted the offer of the Government mentioned in the next paragraph, the United States would breach the contract of September 26, 1918, would refuse to accept or pay for any linters, and would leave the appellant and other cottonseed crushers to their remedy in the courts. (Finding XVIII, R. 60.)

The Government's offer just mentioned was embodied in the modified or settlement contract executed under date of December 31, 1918. (Finding

XX, R. 61.) It altogether changed the relation between the Government and this appellant, as well as between the Government and the other crushers, in respects which will be treated hereafter when the respondent comes to speak of the consideration upon which it was based. (Finding XX, R. 61.) It is found at page 51 of the Record. It was preceded by a notice of cancellation sent out by the Government by telegram on December 30 to the various cottonseed crushers, notifying them that their contracts were cancelled and stating to these crushers that their committee had tentatively agreed upon a form of settlement contract. (Finding XX, R. 61.) It is this modified contract, dated December 31, 1918, which the appellant claims was executed under duress and was without consideration.

The appellant has stated the facts at some length, but the Court's attention is respectfully called to the fact that a large part of its statement embodies facts not found by the Court of Claims, and its contention of duress is based on assumptions of fact which the Court of Claims refused to find. A comparison of the appellant's petition in the Court of Claims with the facts found by that court indicates the points in which the court disagreed with the appellant as to questions of fact in this case. These differences will be more fully referred to as they become material in the course of the argument. The Court of Claims has found the

facts constituting the history of the regulation of appellant's business by the Food Administration and the War Industries Board, failing, however, to find many facts pleaded and stated as facts in its brief by appellant.

The appellant seeks all along to create an atmosphere of hardship and compulsion, but the Court of Claims found nothing to show that the appellant had suffered from these regulations or found them other than quite satisfactory. The Government submits that the control exercised over this appellant by the War Industries Board or the Food Administration, or any other Governmental agency during the course of the operation of appellant's contract with the Government is perfectly immaterial on the question of whether or not at the time of the final conference on December 30, 1918, or later on, when it executed the modification of its contract, this appellant was the victim of duress. Any control the crushers may have been subjected to neither induced the appellant to make the modified contract nor deprived it of its right to sue the Government for any breach of the original contract, and that right, as the Government hopes to show, is a critical point in this case.

ARGUMENT

SUMMARY

I. The Court of Claims had jurisdiction to render the judgment that it did. Its jurisdiction was invoked in the form of a suit falling within the

jurisdiction of the court, regardless of any reference by Congress.

II. There is nothing in the findings of the Court of Claims to indicate that the appellant was forced to sign the settlement contract by fear of bankruptcy or financial distress; nothing to indicate that before it signed that settlement contract it did not have plenty of time to consider and decide whether it would do so; nothing to indicate that it yielded to or was influenced by acts of the Government. On the contrary, the appellant's conduct strongly indicates that at the time the settlement contract was entered into it did not regard itself as having been the victim of duress. The only finding is that the Government threatened to breach the original contract, and that the appellant accepted the terms offered.

III. It seems to be established law that a threat by the Government or by a private party to breach a contract unless the other party will make some new agreement does not constitute duress invalidating the second agreement.

IV. The settlement contract was supported by abundant consideration—difference in price to be paid for linters, relief to the appellant from the obligation to deliver a specific quantity of linters, the privilege to the appellant of selling in the open market, surrender by the Government of a reasonable contention that the war had terminated within the meaning of the contract.

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V. A settlement contract having been based, as above pointed out, on good consideration, is a good accord and satisfaction, being simply a voluntary acceptance by a claimant of a smaller sum than he believes to be due him. Furthermore, the appellant accepted the benefits of this compromise which he now seeks to repudiate.

VI. The appellant's pleadings are based on the theory that it has the right to recover the full contract price for the linters which the Government, relying upon and carrying out the provisions of the modified contract, refused to accept. There is no allegation and no finding, however, that title to these linters ever passed to the Government. There is no allegation or finding of the market value of the linters and nothing, therefore, on which appellant could base a recovery either under the theory of breach of the original contract or under the theory that the Government's obligations were fixed by the cancellation clause.

I

THE COURT OF CLAIMS HAD JURISDICTION TO RENDER A JUDGMENT DISMISSING THE PETITION

The case at bar is founded upon an express contract, so that, under Section 145 of the Judicial Code, this action could be maintained by the appellant in the Court of Claims without Congressional reference.

It is not perceived how the omission of a report to the Senate by the Court of Claims, complained of by the appellant, is relevant on this appeal.

If the jurisdiction of the Court of Claims was based on the Resolution of the Senate referring this matter to the court to investigate and report, it may be doubted whether the proceeding is a judicial one, over which this Court may, under the Constitution, exercise appellate jurisdiction. *Muskrat* v. *United States,* 219 U. S. 346.

The proceeding in the Court of Claims was not based on the Senate Resolution, but was a suit instituted by the appellant by the filing of a petition, and in which the judgment of the Court was invoked, "irrespective of the reference." (R. 20.) The appellant requested the Court of Claims to act on that view. (R. 64.)

II

THERE IS NOTHING IN THE FINDINGS TO BEAR OUT APPELLANT'S CONTENTION THAT IT WAS INDUCED TO SIGN THE SETTLEMENT CONTRACT BY PRESSURE OR COMPULSION

Every argument seriously relied upon by the appellant to show the existence of legal duress is based on facts not embodied in the findings of the Court of Claims—facts, therefore, which are not before this Court on this appeal. *Collier* v. *United States,* 173 U. S. 79.

The appellant argues that it and the entire cotton industry in the South would have been bankrupted had the Government carried out its threat to breach its contract, but there is nothing in the findings of the Court of Claims to support this contention.

Moreover, the appellant here can not predicate duress upon any financial stress or difficulties of other crushers, or of any other persons, but only upon facts proved and found affecting itself alone.

The appellant claims that under this alleged economic pressure the committee representing it and other cottonseed crushers was given but one hour in which to accept the Government's offered settlement. Appellant neglects to point out, however, that these conferences had been under way for a month. (Petition, Par. XXVII, R. 14.)

It further fails to mention that this committee had no power to bind it or any other of the cottonseed crushers; that when the committee reported to its constituents in favor of a settlement, each of those constituents had the option to accept or reject such settlement. The Government in its telegram of December 30 to the crushers (Finding XX, R. 61) stated that the committee's agreement was only tentative. The appellant ignores the fact that its counsel joined with Government officials in signing a statement that the proposed settlement contract, now alleged to have been brought about by duress, was such a one as would have been approved by Mr. Bernard Baruch, Chairman of the War In-

dustries Board, and Mr. George R. James, Chairman of the Linters Section of the War Industries Board, both of whom were out of the city. (Finding XX, R. 63.) Surely appellant's counsel would not have signed such a reference to the proposed settlement contract if it had been forced on his clients by duress.

Particularly it is important to note in Finding XX, R. 61, that the letter sent out by the Ordnance Department to the Du Pont American Industries, Inc., the Government's agent in dealing with these cottonseed crushers, which letter was sent with a printed form of the proposed settlement contract to each of the cottonseed crushers, was prepared not by the Government alone, not only by the officers of the Ordnance Department, but jointly by representatives of the Government and counsel for the appellant and the other crushers. The particular paragraph in that letter relied upon by the appellant to show the pressure that was brought to bear upon it to compel it to sign the settlement contract—paragraph 8—was inserted, as the Court of Claims specifically found (Finding XX), at the request and with the consent of counsel for the crushers, to make certain that all crushers similarly situated would conform to the settlement contract and that none of them would seek and obtain more favorable terms than the rest (Finding XX, R. 61).

The Court of Claims, moreover, did not see fit to find that this appellant or any of the cottonseed

crushers were influenced in the slightest degree by the Government's threat to breach the contract. Here again, a comparison between the appellant's petition and the facts found by the Court of Claims indicate that court's conclusion.

The appellant's maximum claim herein is that the Government threatened to breach a contract in a respect which might have brought about the collapse of the price-fixing plan in the cottonseed industry, known as the "Stabilization Scheme." This stabilization scheme had been constructed by the Food Administration for the purpose of assuring the cotton millers and cottonseed crushers a fixed scale of prices. There is nothing to show that the Government could not lawfully have discontinued it at any time; nothing to show that the industry or this appellant had any vested right in its maintenance.

There is indeed no finding that the Government's breach of contract would have upset the Stabilization Scheme. That is a mere conclusion of the appellant which the Court of Claims refused to find, but even if that would have been the effect of the Government's breaching its contract, it is difficult to see how a threat to breach a contract would have become any the more heinous or more in the nature of duress because it would have resulted in a breaking down of a price-fixing structure originally erected by the Government, which the Government could lawfully have discon-

tinued at any time it chose. There was not even a finding that the destruction of the Stabilization Scheme would have embarrassed the appellant.

Accordingly, the most that we can discover from the findings of the Court of Claims in this case, and from what we are at liberty to infer from its refusals to find, is that the Government threatened to breach a contract which it had with this appellant, and that the appellant, like any other claimant with a disputed claim, thought best to accept less than it was seeking.

III

UNDER THE CIRCUMSTANCES OF THIS CASE A THREAT TO BREACH A CONTRACT CAN NOT BE DURESS AS A MATTER OF LAW

Even if the Court of Claims had found that the appellant executed the settlement contract, which it now seeks to have set aside, only because the Government threatened to breach the original contract and because if such threat had been carried out it would have reduced the appellant to bankruptcy, nevertheless this would not have constituted duress. Much more is it impossible to find duress in law under the circumstances set forth in the findings of the Court of Claims.

Of course, the burden of proving duress is upon the party asserting it. *Mason* v. *United States,* 17 Wall. 67, 74.

There is a case so nearly identical on its facts with the case at bar that the opinion therein ren-

dered in this Court seems almost conclusive. In *Silliman* v. *United States,* 101 U. S. 465, the claimants had leased barges to the United States under a charter party. The United States in the course of performance demanded that the charter price be reduced and threatened, unless the claimants signed a modified charter party, to withhold all payments then due and retain the claimants' barges, all of which the Supreme Court held squarely to have been a breach of the claimants' legal rights under its existing charter party. The claimants signed the modified charter party under protest because they required or supposed they required the money thus withheld to meet their obligations to others, and then sued to have this charter party set aside and to recover the balance of the rental of the barges to which they would have been entitled under the original contract. This Court recognized the hardship of the case, but declared that there had been no legal duress and that the remedy of the claimant lay with the Congress and not the courts.

It has long been established that where a party brings about a compromise of a disputed claim, either by threatening to breach a contract or by withholding moneys due to the other party, this can not constitute duress. Thus in the case of *United States* v. *Child & Co.,* 12 Wall. 232, 244, in which, as in the case at bar, claimant could not get any part

even of what was admittedly due him, except by releasing a part, the Court pointed out that if such a compromise by dispute and negotiation should constitute duress—

> No party can safely pay by way of compromise any sum less than what is claimed of him, for the compromise will be void as obtained by duress. The common and generally praiseworthy procedure by which business men every day sacrifice part of claims which they believe to be just to secure payment of the remainder would always be duress and the compromise void.

In *Mason* v. *United States*, 17 Wall. 67, 74, the Court, in speaking of a claim of duress, said that there was no evidence of it—

> Except that the United States proposed to annul the old contract if the claimant refused to accept the modification, which is wholly insufficient to establish such a charge * * *. Acceptance from the Government of a smaller sum than the one claimed, even in a case where the amount relinquished is large, does not leave the Government open to further claim on the ground of duress, if the acceptance was without intimidation and with a full knowledge of all the circumstances; and the case is not changed because the circumstances attending the transaction were such that the claimant was induced from the want of the money to accept the smaller sum in full, which is not proved in this case.

Compare *Gibbons* v. *United States,* 8 Wall. 269; *St. Louis Hay & Grain Co.* v. *U. S.,* 191 U. S. 159; *Coppage* v. *Kansas,* 236 U. S. 1, 9.

The same doctrine seems also to prevail in the State cases.[1]

The appellant seems to rely on two classes of cases which may be referred to as "additional service" cases and tax cases. Under the former classification fall the *Freund, Hunt,* and *Smith cases* cited by appellant. Under the latter, the *Ward, Swift,* and *Robertson* decisions.

It is believed to be sufficient, in order to distinguish the " additional service " cases from the case at bar, to call the Court's attention to two of such cases not mentioned by the appellant which, when read together, seem to establish the principle on which all these cases rest. If a contractor performs extra services at the request of the Government which he was under no contractual duty to perform, he may recover the fair value of such extra services if he can prove a contract, express or implied, on the part of the Government. This requirement is satisfied if he can show that he protested against performing the extra work without additional compensation and that the Government was apprized of the fact that he expected to be paid for it. The two cases referred to are *United States* v.

[1] The following is a partial list of the State cases: *Hackley* v. *Headley,* 45 Mich. 569 (Op. by Cooley, J.); *Goebel* v. *Linn,* 47 Mich. 489; *Miller* v. *Miller,* 68 Pa. 486; *McCormick* v. *Dalton,* 53 Kan. 146; *Cable* v. *Foley,* 45 Minn. 421; *Wood* v. *Kansas City Home Telephone Company,* 223 Mo. 537; *Eaarle* v. *Berry,* 27 R. I. 221.

Utah, Nevada & Calif. Stage Co., 199 U. S. 414, and *St. Louis S. W. R. R. Co.* v. *United States*, 262 U. S. 70.

The tax cases cited by the appellant seem to the Government to be, if possible, even less applicable than the "additional service" cases. In *Ward* v. *Love County*, 253 U. S. 17, 24, this Court clearly pointed out that a taxpayer has a right of action for taxes illegally collected, because if he did not, there would be a taking of property without due process of law. It is necessary, of course, that the payment should not have been purely voluntary. (See *United States* v. *Edmonston*, 181 U. S. 500.) Where a statute provides for protest at the time of payment, that protest is sufficient as a basis for recovery. Where a statute does not so provide, protest is evidence of the involuntary nature of the payment. In either event in the tax cases, as in the "additional service" cases, the recovery is not based on the theory of duress. Duress and hardship, if present, only help to show that additional payment was expected for the additional services, or, in the tax cases, that the payment could not have been voluntary.

A taxpayer may recover back any payment unless he made it willingly, without protest or objection; a contractor dealing with the Government or a private party can always recover on a *quantum meruit* for services performed outside of the terms of his contract, where the other party knows he is

not performing the services as a gratuity. The fact that the tax cases do not rest upon the theory of duress is further indicated by the expressions of the Court in *United States* v. *Holland-American Lijn*, 254 U. S. 148; that theory implies an action in tort of which the Court of Claims could not have jurisdiction.

There is no distinction because one of the parties was the United States Government. The *Silliman*, the *Mason* and *Child cases*, as well as many others, regard the Government as in no different case from an individual under these circumstances. Indeed, when the contractor is thrown back upon his remedy in the courts by the Government's threat to breach a contract, he is in one respect more fortunate than if he were dealing with an individual or corporation. He has a debtor of whose solvency he is assured.

IV

THERE WAS ABUNDANT CONSIDERATION TO SUPPORT THE MODIFYING OR SETTLEMENT CONTRACT

The modifying or settlement contract is found on page 51 of the Record, while the original contract is found on page 43. A comparison of these two contracts shows that the appellant's claim that there was no consideration for the settlement agreement is not true. In the first place, the price to be paid for the linters supplied was different

under the two contracts. Moreover, the appellant was relieved of its obligations under the original contract to deliver a specified quantity of linters, its estimated maximum production for the season 1918–19. Further, by the new contract it got the privilege of selling as many as it chose on the open market, the United States guaranteeing, however, to take such as should be left upon its hands on July 31, 1919, up to a maximum of appellant's proportion of the 150,000 bales allotted to all the different seed crushers. (R. 53.) Accordingly, on the assumption that the war had not "terminated" and that the Government had no right to cancel the contract under the termination clause, it is apparent that sufficient consideration was mutually furnished by the parties to support the new contract.

On the other hand, if the Government had the right to terminate, and if that is what it actually did, as specifically held in the court's opinion and indicated by the cancellation notice which was sent on December 30 in accordance with the original contract, then the modifying contract was an agreement by the Government to accept a much greater quantity of linters than it could possibly have been expected or required to accept under the thirty-day provision of the termination clause. The appellant could not possibly have manufactured in thirty days anything like the number of linters which it

manufactured up to July 31, 1919, and which the Government accepted almost in their entirety. If, then, the Government had the right to cancel, this additional element of consideration appears.

Moreover, the Government seems to have given up its contention in a perfectly reasonable dispute as to whether or not the war had " terminated " within the meaning of this contract, and whether or not, therefore, it had the right to act under the termination clause of the original contract. The right of the Government to terminate or cancel was to come into effect " in the event of the termination of the present war." It was surely not unreasonable for the Government to contend that in a contract for the procurement of material needed solely for the prosecution of the war—needed only during the continuance of hostilities—the thought of the contracting parties must have been that the Government should have the right to terminate when the need for such material had ceased. It was the termination of hostilities, not the signing one or two or three years later of a formal treaty of peace, which was to release the Government from the obligation to accept from contractors enormous quantities of war supplies which then would have become useless. The question was not whether a state of war existed under the rules of international law, but what the parties to this contract for munitions meant by termination of the war.

V

THE SETTLEMENT CONTRACT WAS A GOOD ACCORD AND SATISFACTION. MOREOVER, THE APPELLANT ACQUIESCED IN IT AND ACCEPTED ITS BENEFITS

In the first place, upon good consideration the appellant entered into a settlement contract which contained a general release to the Government of all the appellant's claims. (Finding XX, R. 62.) It is elementary that such a compromise is binding (see *United States* v. *Wm. Cramp & Sons Co.*, 206 U. S. 118; *Savage Arms Corporation* v. *United States*, 266 U. S. 217; *St. Louis, B. & M. Ry. Co.* v. *United States*, 268 U. S. 169, and cases cited), and that it makes no difference that it was entered into under protest. A voluntary acceptance by a claimant of a smaller sum than he believes to be due, or than is actually due him, is made none the less binding by protest, if offered in full satisfaction of his claim. Every party is unwilling to give up what he believes due him, and usually objects in some form. *Savage, Executrix*, v. *United States*, 92 U. S. 382.

Furthermore, it is to be noted that this appellant made no protest and no attempt to repudiate the settlement agreement of December 31 (Finding XXI, R. 63) until on June 29, the last day before the expiration of the period within which claim could be filed under the Dent Act, the appellant filed a claim (Finding XXI, R. 63). Also it is to be noted that even after filing its claim it accepted

the final payment under the terms of the settlement contract. (Finding XXII, R. 63.) Certainly there is nothing in the entire record from which it can be inferred that when appellant accepted that final payment there was any pressure upon it to do so, or that it did it other than voluntarily. As the Court of Claims pointed out, appellant is trying to repudiate now a contract under which it had willingly received all benefits.

VI

NEITHER THE APPELLANT'S PLEADINGS NOR THE FINDINGS SHOW ANY FACTS BY WHICH DAMAGES COULD BE ASCERTAINED

The Government feels justified in calling the Court's attention to another matter, which must be treated under alternative assumptions.

First, if it be assumed that the war was not terminated, that the cancellation clause of the original contract of September 26, 1918, had not taken effect, and that the Government had no right to cancel, then it would seem that the appellant's only claim for recovery of damages must be the difference between the contract price which, under the contract of September 26, 1918, the Government had agreed to pay for linters produced by the appellant and the fair market value of those linters at the time of the breach.

The appellant in seeking to set aside the modified or settlement contract is suing to recover the

full contract price of the linters which the Government, in carrying out the provisions of that modified contract, refused to take. (Finding XXII, R. 63. Petition, Par. 32, 33, R. 18, 19, 20.) This can only be upon the theory, it would seem, that title to those linters had passed.

But the Record is bare of anything upon which it could be found that title to these linters, which had not been accepted by the Government, had nevertheless passed to it. And there is neither allegation nor finding as to the market value of the linters at any time between December 30, 1918, and July 31, 1919, except only the allegation at paragraph 13 of the Petition at page 7 of the Record, to the effect that on May 1, 1919, the market value was higher than $0.068, which was higher than the original contract price of $0.0467. (R. 43.) There is no showing of market value at the time of breach nor of any resale loss.

On the other hand, if it be assumed that the war had terminated within the meaning of the termination clause of the contract of September 26, 1918, and that the Government, therefore, had a right to cancel and call that termination clause into operation, then the most the appellant could claim would be that it was entitled to the difference between the contract price and market value of such linters as it could have manufactured in thirty days, and to reimbursement for the commitments mentioned in the termination clause.

Once more, there is no allegation or finding of the market value of linters during the 30-day period mentioned in the cancellation clause, nor of the quantity of linters, if any, produced during that period; and none as to the amount of appellant's commitments, if any, for which it would have been entitled to reimbursement under the termination clause.

CONCLUSION

The Government accordingly respectfully submits (1) that there is nothing to show that the appellant was forced to sign the modified or settlement contract by any pressure or compulsion exerted by the Government; (2) that no pressure or compulsion which the appellant claims or can claim was exerted by the Government under the circumstances of this case amounts to duress invalidating the settlement contract; (3) that the settlement contract was based upon abundant consideration; (4) that the settlement contract and the appellant's conduct after its execution are sufficient to bind the appellant to its terms and to preclude the appellant from being heard to request that it be set aside; and, finally, (5) that the appellant has made no case upon which, even if its request to set aside the settlement contract were granted, it could recover any damages against the Government.

Accordingly, the Government respectfully submits that the judgment of the Court of Claims should be affirmed with costs.

WILLIAM D. MITCHELL,
Solicitor General.

PAUL SHIPMAN ANDREWS,
ARTHUR M. LOEB,
HAROLD HORVITZ,
Special Assistants to the Attorney General.

FEBRUARY, 1926.

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